

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Bryan Ardoin	§	
Plaintiff,	§	
	§	
v.	§	
	§	CIVIL ACTION NO. 4:19-cv-02234
Juan Obregon, et al,	§	
Defendant.	§	
	§	

DEFENDANTS CITY OF PORT LAVACA'S AND JUAN OBREGON'S  
DEFENSES, ANSWER, AND JURY DEMAND

Subject to their motion to dismiss, Defendants City of Port Lavaca, Texas, and Juan Obregon file their defenses, answer, and request for jury trial, in response to Plaintiff's' claims and allegations {Docket. No. 1 }.

FIRST DEFENSE

1. Plaintiff fails to state a claim for which relief may be granted.

SECOND DEFENSE

2. Officer Obregon is protected from suit and liability by qualified and official immunity.

THIRD DEFENSE

3. Officer Obregon's liability, if any, for claims asserted under Texas law is barred or alternatively limited, by TEX. CIV. PRAC. & REM. CODE § 108.002 and

TEX. CIV. PRAC. & REM. CODE , CHAPTER 41.

#### FOURTH DEFENSE

4. Officer Obregon asserts his rights under the 14<sup>th</sup> Amendment to the United States Constitution and maintains that punitive damages are unconstitutional in this case to the extent they are assessed:

- a. In an amount left to the discretion of the judge and/or jury;
- b. In any decision representing less than a unanimous verdict;
- c. Where underlying culpability is not assessed upon a finding of guilt beyond a reasonable doubt;
- d. Where the standard of guilt is not clearly defined; and/or
- e. Where the assessment of punitive or exemplary damages differs from defendant to defendant and treats similarly situated Defendant materially differently.

#### ANSWER

5. Subject to the City's and Officer Obregon's motion to dismiss, and the foregoing defenses, the City and Officer Obregon answer Plaintiff's allegations and claims as follows:

6. As permitted by Rule 8(b) of the Federal Rules of Civil Procedure, the City and Officer Obregon deny each allegation and claim Plaintiff asserts except those the City and Officer Obregon expressly admit herein.

7. The City and Officer Obregon deny the allegations and claims in ¶¶ 1, 2, 3,

5, 8, 10, 12, 19, 21-23, 26-34, 36, and ¶¶ 38-87 of Plaintiff's complaint.

8. In response to the allegations and claims in ¶ 4 of Plaintiff's complaint, the City and Officer Obregon admit that Plaintiff sued City employee Officer Obregon based upon his performance of duties within the general scope of his police office or employment, under color of law of the State of Texas, in objective good faith and within the proper scope of discretionary authority as a Texas municipal peace officer. The City and Officer Obregon deny the remaining allegations and claims in ¶ 4 of Plaintiff's complaint.

9. The City is a governmental unit located in the State of Texas. The City and Officer Obregon deny the remaining allegations and claims in ¶ 6 and ¶ 7 of Plaintiff's complaint.

10. Colin Rangnow is employed by the City as the City's chief of police. The City and Officer Obregon deny the remaining allegations and claims in ¶ 9 of Plaintiff's complaint.

11. The Port Lavaca police department is a department of the City. The City and Officer Obregon deny the remaining allegations and claims in ¶ 11 of Plaintiff's complaint.

12. Under 28 U.S.C. § 1331, this Court has general jurisdiction over this lawsuit and venue is proper in this Court. The City and Officer Obregon deny the remaining allegations and claims in ¶¶ 13-15 of Plaintiff's complaint.

13. Plaintiff appears to have fallen asleep inside a vehicle in the City of Port Lavaca. The City and Officer Obregon deny the remaining allegations and claims in ¶ 16 of Plaintiff's complaint.

14. On August 27, 2018, Officer Obregon responded to investigate a report Plaintiff was inside a vehicle in the HEB parking lot after the store had closed and Officer Obregon found Plaintiff apparently asleep in a vehicle. The City and Officer Obregon deny the remaining allegations and claims in ¶ 17 of Plaintiff's complaint.

15. The City and Officer Obregon admit the allegation in ¶¶ 18, 20, 37 of Plaintiff's complaint.

16. Officer Obregon asked Plaintiff if he had drank anything and Plaintiff stated he doesn't drink alcohol. The City and Officer Obregon deny the remaining allegations and claims in ¶ 24 of Plaintiff's complaint.

17. After an officer explained field sobriety tests and their purpose, Plaintiff voluntarily consented to perform field sobriety tests to determine if Plaintiff could safely operate a vehicle. The City and Officer Obregon deny the remaining allegations and claims in ¶ 25 of Plaintiff's complaint.

18. An officer arrested Plaintiff and charged Plaintiff of committing the offense of public intoxication. The City and Officer Obregon deny the remaining allegations and claims in ¶ 35 of Plaintiff's complaint.

## REQUEST FOR JURY TRIAL

19. The City and Officer Obregon assert their right to trial by jury on all issues in accordance with Rule 38 of the Federal Rules of Civil Procedure.

## PRAYER

WHEREFORE PREMISES CONSIDERED, the City and Officer Obregon pray they each be released, discharged, and acquitted of all charges and allegations filed against them, that judgment be rendered in the City and Officer Obregon's favor, either prior to, or at the conclusion of a trial, that Plaintiff take nothing by reason of this suit, and that the City and Officer Obregon recover all costs of court and attorney's fees incurred in defending against Plaintiff's claims, as well as other relief to which the City and Officer Obregon are justly entitled in law and equity.

Respectfully submitted,

/s/ Norman Ray Giles  
WILLIAM S. HELFAND  
Attorney-in-Charge  
SBOT: 09388250  
NORMAN RAY GILES  
SBOT: 24014084

OF COUNSEL:

LEWIS BRISBOIS BISGAARD & SMITH, LLP  
24 Greenway Plaza, Suite 1400  
Houston, Texas 77046  
(713) 659-6767  
(713) 759-6830 (Fax)

ATTORNEYS FOR DEFENDANTS  
City of Port Lavaca, Texas  
Officer Juan Obregon

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to the following counsel of record in accordance with the District's ECF service rules on this 11<sup>th</sup> day of September, 2019.

Andre D. Davis  
3003 South Loop West, Suite 108  
Houston, Texas 77054  
andre@attorneyandreevans.com

/s/ Norman Ray Giles